

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SALVATORE COSTA,

Plaintiff,

**NOTICE OF
MOTION TO DISMISS**

-against-

07 Civ. 8032 (LAK)(AJP)

THE CITY OF NEW YORK and CHIEF JOE FOX,

Defendants.

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PLEASE TAKE NOTICE that upon Defendants' Memorandum of Law in Support Of Their Motion to Dismiss, dated December 27, 2007, and all papers and proceedings heretofore and herein, defendants will move this Court, before the Honorable Lewis A. Kaplan, United States District Judge, Southern District of New York, at the United States Courthouse, located at 500 Pearl Street, New York, New York, at a date and time to be set by the Court, for an order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the First Amended Complaint in its entirety on the grounds that the it fails to state a claim upon which relief can be granted, and the individual defendant is protected from suit by the doctrine of qualified immunity, entering judgment for defendants, granting defendants costs, fees, and disbursements, together with such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE THAT, pursuant Local Civil Rule 6.1(b), answering papers, if any, must be served within ten business days after service of defendants' moving papers, and reply papers, if any, are to be served upon the plaintiff's counsel within five business days after service of the answering papers.

PLEASE TAKE FURTHER NOTICE, that, pursuant to Rule 12 of the Federal Rules of Civil Procedure, in the event that this motion is denied, in whole or in part, defendants respectfully request 20 days from docketing of the order denying the motion in which to answer the First Amended Complaint.

Dated: New York, New York
December 27, 2007

MICHAEL A. CARDODOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room 2-184
New York, New York 10007-2601
(212) 788-8688

By: **ECF:** /s/
 Ivan A. Mendez, Jr.
 Assistant Corporation Counsel

TO: **DAVID M. FISH**
 500 5th Avenue, Suite 5100
 New York, New York 10038

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Of Counsel: Ivan A. Mendez, Jr.
Tel: (212) 788-8688

Matter No.: 2007-029207

Due and timely service is hereby admitted.

Dated: New York, N.Y., 2007

Signed:

Attorney for.....